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**HOUSE BILL 6**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003**

**INTRODUCED BY**

Daniel R. Foley

**AN ACT**

**RELATING TO SEXUAL OFFENSES; REVISING THE DEFINITION OF  
SEX OFFENSE; LENGTHENING THE REGISTRATION PERIODS FOR SEX  
OFFENDERS; REQUIRING A SEX OFFENDER TO PROVIDE ADDITIONAL  
REGISTRATION INFORMATION; REQUIRING SEX OFFENDERS TO PROVIDE  
DNA SAMPLES WHEN REGISTERING; INCLUDING SEX OFFENDERS AS  
COVERED OFFENDERS SUBJECT TO COLLECTION OF DNA SAMPLES;  
AMENDING SECTIONS OF THE SEX OFFENDER REGISTRATION AND  
NOTIFICATION ACT; AMENDING A SECTION OF THE DNA IDENTIFICATION  
ACT; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,  
Chapter 106, Section 3, as amended) is amended to read:**

**"29-11A-3. DEFINITIONS. -- As used in the Sex Offender  
Registration and Notification Act:**

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1           A. "sex offender" means a person eighteen years of  
2 age or older who:

3                   (1) is a resident of New Mexico who is  
4 convicted of a sex offense in New Mexico;

5                   (2) changes his residence to New Mexico, when  
6 that person has been convicted of a sex offense in another  
7 state pursuant to state, federal or military law;

8                   (3) is a resident of New Mexico who is  
9 convicted of a sex offense pursuant to federal or military law;  
10 or

11                   (4) is a resident of another state and who has  
12 been convicted of a sex offense pursuant to state, federal or  
13 military law, but who is:

14                           (a) employed full time or part time in  
15 New Mexico for a period of time exceeding fourteen days or for  
16 an aggregate period of time exceeding thirty days during any  
17 calendar year; or

18                           (b) enrolled on a full-time or part-time  
19 basis in a private or public school in New Mexico, including a  
20 secondary school, a trade school, a professional institution or  
21 an institution of higher education; and

22           B. "sex offense" means:

23                   (1) criminal sexual penetration in the first,  
24 second, third or fourth degree, as provided in Section 30-9-11  
25 NMSA 1978;

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1 (2) criminal sexual contact in the fourth  
2 degree, as provided in Section 30-9-12 NMSA 1978;

3 (3) criminal sexual contact of a minor in the  
4 third or fourth degree, as provided in Section 30-9-13 NMSA  
5 1978;

6 (4) sexual exploitation of children, as  
7 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA  
8 1978;

9 (5) sexual exploitation of children by  
10 prostitution, as provided in Section 30-6A-4 NMSA 1978;

11 (6) kidnapping, as provided in Section  
12 30-4-1 NMSA 1978, when the victim is less than eighteen years  
13 of age and the offender is not a parent of the victim;

14 (7) false imprisonment, as provided in Section  
15 30-4-3 NMSA 1978, when the victim is less than eighteen years  
16 of age and the offender is not a parent of the victim;

17 (8) aggravated indecent exposure, as provided  
18 in Section 30-9-14.3 NMSA 1978;

19 (9) enticement of a child, as provided in  
20 Section 30-9-1 NMSA 1978;

21 [~~(8)~~] (10) solicitation to commit criminal  
22 sexual contact of a minor in the third or fourth degree, as  
23 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

24 [~~(9)~~] (11) attempt to commit any of the sex  
25 offenses set forth in Paragraphs (1) through [~~(7)~~] (8) of this

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1 subsection, as provided in Section 30-28-1 NMSA 1978. "

2 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,  
3 Chapter 106, Section 4, as amended) is amended to read:

4 "29-11A-4. REGISTRATION OF SEX OFFENDERS-- INFORMATION  
5 REQUIRED-- CRIMINAL PENALTY FOR NONCOMPLIANCE. --

6 A. A sex offender residing in this state shall  
7 register with the [~~county~~] sheriff for the county in which the  
8 sex offender resides.

9 B. A sex offender who is a current resident of New  
10 Mexico shall register with the county sheriff no later than ten  
11 days after being released from the custody of the corrections  
12 department or being placed on probation or parole. A sex  
13 offender who changes his residence to New Mexico shall register  
14 with the county sheriff no later than ten days after  
15 establishing residence in this state. When a sex offender  
16 registers with the county sheriff, he shall provide the  
17 following registration information:

- 18 (1) his legal name and any other names or
- 19 aliases that he is using or has used;
- 20 (2) his date of birth;
- 21 (3) his social security number;
- 22 (4) his current address;
- 23 (5) his place of employment;
- 24 (6) motor vehicle registration information for
- 25 all motor vehicles that the sex offender owns;

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1                    [~~(6)~~] (7) the sex offense for which he was  
2 convicted; and

3                    [~~(7)~~] (8) the date and place of his sex  
4 offense conviction.

5                    C. A sex offender who is a resident of another  
6 state but who is employed in New Mexico or attending school in  
7 New Mexico shall register with the [~~county~~] sheriff for the  
8 county in which the sex offender is working or attending  
9 school.

10                    D. A sex offender who is a resident of another  
11 state but who is employed in New Mexico or attending school in  
12 New Mexico shall register with the county sheriff no later than  
13 ten days after beginning work or school. When the sex offender  
14 registers with the county sheriff, he shall provide the  
15 following registration information:

16                    (1) his legal name and any other names or  
17 aliases that he is using or has used;

18                    (2) his date of birth;

19                    (3) his social security number;

20                    (4) his current address in his state of  
21 residence and, if applicable, the address of his place of  
22 lodging in New Mexico while he is working or attending school;

23                    (5) his place of employment or the name of the  
24 school he is attending;

25                    (6) motor vehicle registration information for

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1 all motor vehicles that the sex offender owns;

2 [~~(6)~~] (7) the sex offense for which he was  
3 convicted; and

4 [~~(7)~~] (8) the date and place of his sex  
5 offense conviction.

6 E. When a sex offender registers with a county  
7 sheriff, the sheriff shall obtain:

8 (1) a photograph of the sex offender and a  
9 complete set of the sex offender's fingerprints; [~~and~~]

10 (2) a description of any tattoos, scars or  
11 other distinguishing features on the sex offender's body that  
12 would assist in identifying the sex offender;

13 (3) a DNA sample for insertion into the DNA  
14 identification system as a covered offender pursuant to the  
15 provisions of the DNA Identification Act; and

16 (4) a DNA fee of one hundred dollars (\$100).  
17 The fee shall be deposited in the DNA identification system  
18 fund.

19 F. When a sex offender who is registered changes  
20 his residence within the same county, the sex offender shall  
21 send written notice of his change of address, including proof  
22 of his new address, to the county sheriff no later than ten  
23 days after establishing his new residence.

24 G. When a sex offender who is registered changes  
25 his residence to a new county in New Mexico, the sex offender

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1 shall register with the [county] sheriff of the new county no  
2 later than ten days after establishing his new residence. The  
3 sex offender shall also send written notice of the change in  
4 residence to the county sheriff with whom he last registered no  
5 later than ten days after establishing his new residence.

6 H. When a sex offender who is registered or who is  
7 required to register does not have an established residence,  
8 but is homeless, lives in a shelter, halfway house or  
9 transitional living facility or stays in multiple locations,  
10 the sex offender shall register with the sheriff for each  
11 county in which the sex offender is living. The sex offender  
12 shall register no later than ten days after a change in his  
13 living arrangements.

14 I. When a sex offender who is registered  
15 subsequently is employed, begins a vocation or is enrolled as a  
16 student at an institution of higher education, the sex offender  
17 shall send written notice of that status to the county sheriff  
18 no later than ten days after beginning employment, beginning a  
19 vocation or enrolling at an institution of higher education.  
20 The sex offender shall also send written notice of any change  
21 regarding his employment or enrollment status at an institution  
22 of higher education to the county sheriff no later than ten  
23 days after the change in his employment or enrollment status.

24 [~~H.-~~] J. Following his initial registration pursuant  
25 to the provisions of this section:

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1 (1) a sex offender required to register  
2 pursuant to the provisions of Subsection D of Section  
3 29-11A-5 NMSA 1978 shall [~~annually~~] renew his registration with  
4 the county sheriff [~~prior to December 31 of each subsequent~~  
5 ~~calendar year for a period of twenty years~~] not less than once  
6 in each ninety-day period following the date of the sex  
7 offender's initial registration for the entirety of his natural  
8 life; and

9 (2) a sex offender required to register  
10 pursuant to the provisions of Subsection E of Section  
11 29-11A-5 NMSA 1978 shall annually renew his registration with  
12 the county sheriff prior to December 31 of each subsequent  
13 calendar year for a period of [~~ten~~] twenty years.

14 K. Notwithstanding the provisions of Paragraph (2)  
15 of Subsection J of this section, a sex offender who is  
16 convicted a second or subsequent time for a sex offense set  
17 forth in Subsection E of Section 29-11A-5 NMSA 1978 shall be  
18 required to renew his registration with the county sheriff not  
19 less than once in each ninety-day period following the date of  
20 the sex offender's initial registration for the entirety of his  
21 natural life.

22 [~~F.~~] L. A sex offender who willfully fails to  
23 comply with the registration requirements set forth in this  
24 section is guilty of a fourth degree felony and shall be  
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

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1 1978.

2 [J-] M A sex offender who willfully provides false  
3 information when complying with the registration requirements  
4 set forth in this section is guilty of a fourth degree felony  
5 and shall be sentenced pursuant to the provisions of Section  
6 31-18-15 NMSA 1978. "

7 Section 3. Section 29-11A-5 NMSA 1978 (being Laws 1995,  
8 Chapter 106, Section 5, as amended) is amended to read:

9 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--  
10 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN  
11 THE NATIONAL SEX OFFENDER REGISTRY--RULES. --

12 A. A county sheriff shall maintain a local registry  
13 of sex offenders in his jurisdiction required to register  
14 pursuant to the provisions of the Sex Offender Registration and  
15 Notification Act.

16 B. The county sheriff shall forward:

17 (1) registration information obtained from sex  
18 offenders to the department of public safety. The initial  
19 registration information and any new registration information  
20 subsequently obtained from a sex offender shall be forwarded by  
21 the county sheriff no later than ten working days after the  
22 information is obtained from a sex offender. If the department  
23 of public safety receives information regarding a sex offender  
24 from a governmental entity other than a county sheriff, the  
25 department shall send that information to the [county] sheriff

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1 for the county in which the sex offender resides;

2 (2) samples of DNA obtained from sex offenders  
3 to the DNA identification system's administrative center for  
4 insertion in the DNA identification system as covered offenders  
5 pursuant to the DNA Identification Act; and

6 (3) collected DNA fees to the department of  
7 public safety for deposit into the DNA identification system  
8 fund.

9 C. The department of public safety shall maintain a  
10 central registry of sex offenders required to register pursuant  
11 to the provisions of the Sex Offender Registration and  
12 Notification Act. The department shall participate in the  
13 national sex offender registry administered by the United  
14 States department of justice. The department shall send  
15 conviction information and fingerprints for all sex offenders  
16 registered in New Mexico to the national sex offender registry  
17 administered by the United States department of justice and to  
18 the federal bureau of investigation.

19 D. The department of public safety shall retain  
20 registration information regarding sex offenders convicted for  
21 the following sex offenses for ~~[a period of twenty years~~  
22 ~~following the sex offender's conviction, release from prison or~~  
23 ~~release from probation or parole, whichever occurs later]~~ the  
24 entirety of the sex offender's natural life:

25 (1) criminal sexual penetration in the first,

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1 [or] second or third degree, as provided in Section 30-9-11  
2 NMSA 1978;

3 (2) criminal sexual contact of a minor in the  
4 third or fourth degree, as provided in Section 30-9-13 NMSA  
5 1978;

6 (3) sexual exploitation of children, as  
7 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA  
8 1978;

9 (4) kidnapping, as provided in Section  
10 30-4-1 NMSA 1978, when the victim is less than eighteen years  
11 of age and the offender is not a parent of the victim; [or]

12 (5) criminal sexual contact in the fourth  
13 degree, as provided in Section 30-9-12 NMSA 1978; or

14 [~~(5)~~] (6) attempt to commit any of the sex  
15 offenses set forth in Paragraphs (1) through [~~(4)~~] (5) of this  
16 subsection, as provided in Section 30-28-1 NMSA 1978.

17 E. The department of public safety shall retain  
18 registration information regarding sex offenders convicted for  
19 the following offenses for a period of [~~ten~~] twenty years  
20 following the sex offender's conviction, release from prison or  
21 release from probation or parole, whichever occurs later:

22 (1) criminal sexual penetration in the [~~third~~  
23 ~~or~~] fourth degree, as provided in Section 30-9-11 NMSA 1978;

24 [~~(2) criminal sexual contact in the fourth~~  
25 ~~degree, as provided in Section 30-9-12 NMSA 1978;~~

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1                   ~~(3) criminal sexual contact of a minor in the~~  
2 ~~fourth degree, as provided in Section 30-9-13 NMSA 1978;~~

3                   ~~(4)~~ (2) sexual exploitation of children by  
4 prostitution, as provided in Section 30-6A-4 NMSA 1978;

5                   ~~(5)~~ (3) false imprisonment, as provided in  
6 Section 30-4-3 NMSA 1978, when the victim is less than eighteen  
7 years of age and the offender is not a parent of the victim;

8                   (4) aggravated indecent exposure, as provided  
9 in Section 30-9-14.3 NMSA 1978;

10                   (5) enticement of a child, as provided in  
11 Section 30-9-1 NMSA 1978;

12                   (6) solicitation to commit criminal sexual  
13 contact of a minor in the third or fourth degree, as provided  
14 in Sections 30-9-13 and 30-28-3 NMSA 1978; or

15                   (7) attempt to commit any of the sex offenses  
16 set forth in Paragraphs (1) through ~~(5)~~ (4) of this  
17 subsection, as provided in Section 30-28-1 NMSA 1978.

18                   F. Notwithstanding the provisions of Subsection E  
19 of this section, when a sex offender is convicted a second or  
20 subsequent time for a sex offense set forth in that subsection,  
21 the department of public safety shall retain registration  
22 information regarding the sex offender for the entirety of the  
23 sex offender's natural life.

24                   ~~F.~~ G. The department of public safety shall adopt  
25 rules necessary to carry out the non-DNA provisions of the Sex

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1 Offender Registration and Notification Act.

2 H. The DNA identification system oversight  
3 committee and the DNA identification system's administrative  
4 center shall adopt rules necessary to carry out the DNA  
5 provisions of the Sex Offender Registration and Notification  
6 Act. "

7 Section 4. Section 29-11A-5.1 NMSA 1978 (being Laws 1999,  
8 Chapter 19, Section 8, as amended) is amended to read:

9 "29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING  
10 CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY  
11 NOTIFICATION--INTERNET WEB SITE.--

12 A. If a sex offender is convicted of one of the  
13 following sex offenses, the county sheriff shall forward  
14 registration information obtained from the sex offender to the  
15 district attorney for the judicial district in which the sex  
16 offender resides and, if the sex offender is a resident of a  
17 municipality, the chief law enforcement officer for the  
18 municipality in which the sex offender resides:

19 (1) criminal sexual penetration in the first,  
20 [~~or~~] second or third degree, as provided in Section 30-9-11  
21 NMSA 1978;

22 (2) criminal sexual contact of a minor in the  
23 third or fourth degree, as provided in Section 30-9-13 NMSA  
24 1978;

25 (3) sexual exploitation of children, as

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1 provided in [~~Subsection A, B or C of~~] Section 30-6A-3 NMSA  
2 1978;

3 (4) sexual exploitation of children by  
4 prostitution, as provided in Section 30-6A-4 NMSA 1978; or

5 (5) attempt to commit any of the sex offenses  
6 set forth in Paragraphs (1) through (4) of this subsection, as  
7 provided in Section 30-28-1 NMSA 1978.

8 B. A person who wants to obtain registration  
9 information regarding sex offenders described in Subsection A  
10 of this section may request that information from the:

11 (1) [~~county~~] sheriff for the county in which  
12 the sex offenders reside;

13 (2) chief law enforcement officer for the  
14 municipality in which the sex offenders reside;

15 (3) district attorney for the judicial  
16 district in which the sex offenders reside; or

17 (4) secretary of public safety.

18 C. Upon receiving a request for registration  
19 information regarding sex offenders described in Subsection A  
20 of this section, the county sheriff, chief municipal law  
21 enforcement officer, district attorney or secretary of public  
22 safety shall provide that registration information, with the  
23 exception of a sex offender's social security number, within a  
24 reasonable period of time, and no later than seven days after  
25 receiving the request.

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1                   D. Within seven days of receiving registration  
2 information from a sex offender described in Subsection A of  
3 this section, the county sheriff shall contact every licensed  
4 daycare center, elementary school, middle school and high  
5 school within a one-mile radius of the sex offender's residence  
6 and provide them with the sex offender's registration  
7 information, with the exception of the sex offender's social  
8 security number.

9                   E. The department of public safety may establish  
10 and manage an internet web site that provides the public with  
11 registration information regarding sex offenders described in  
12 Subsection A of this section. The registration information  
13 provided to the public pursuant to this subsection shall not  
14 include a sex offender's social security number or a sex  
15 offender's place of employment, unless the sex offender's  
16 employment requires him to have direct contact with children.

17                   F. DNA analysis information shall only be disclosed  
18 pursuant to the provisions of Section 29-16-8 NMSA 1978."

19                   Section 5. Section 29-16-6 NMSA 1978 (being Laws 1997,  
20 Chapter 105, Section 6, as amended) is amended to read:

21                   "29-16-6. COLLECTION OF SAMPLES. --

22                   A. A covered offender shall provide one or more  
23 samples to the administrative center, as follows:

24                   (1) a covered offender convicted on or after  
25 July 1, 1997 shall provide a sample immediately upon request of

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1 the corrections department so long as the request is made  
2 before release from any correctional facility or, if the  
3 covered offender is not sentenced to incarceration, before the  
4 end of any period of probation or other supervised release;

5 (2) a covered offender incarcerated on or  
6 after July 1, 1997 shall provide a sample immediately upon  
7 request of the corrections department so long as the request is  
8 made before release from any correctional facility; ~~and~~

9 (3) a covered offender on probation or other  
10 supervised release on or after July 1, 1997 shall provide a  
11 sample immediately upon request of the corrections department  
12 so long as the request is made before the end of any period of  
13 probation or other supervised release; and

14 (4) a covered offender who registers or renews  
15 his registration as a sex offender pursuant to the provisions  
16 of Section 29-11A-4 NMSA 1978 on or after January 1, 2004 shall  
17 provide a sample at the time the sex offender registers or  
18 renews his registration.

19 B. Samples from unidentified persons or relatives  
20 of a missing person shall be provided to the administrative  
21 center, as follows:

22 (1) upon the completion of a permission to  
23 search form authorizing the collection of a DNA sample;

24 (2) upon the receipt of a properly executed  
25 search warrant; or

1 (3) upon the issuance of a court order.

2 C. Samples from unidentified human remains shall be  
3 provided by the state medical investigator.

4 D. Samples of known reference materials from  
5 missing persons shall be provided by the investigating law  
6 enforcement agency. "

7 Section 6. EMERGENCY.--It is necessary for the public  
8 peace, health and safety that this act take effect immediately.

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